

# A BALANCING ACT

## ACCOMMODATING THE NEEDS OF THE BENCH, BAR, AND MEDIA IN THE PURSUIT OF JUSTICE

### Bench-Bar-Media Committee Draft Report

August 2010



JUDICIAL COUNCIL  
OF CALIFORNIA

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ADMINISTRATIVE OFFICE  
OF THE COURTS

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To view this report and provide comments, please visit  
[www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment).

Additional information about the Bench-Bar-Media Committee may be found at  
[www.courtinfo.ca.gov/jc/tflists/benchbarmedia.htm](http://www.courtinfo.ca.gov/jc/tflists/benchbarmedia.htm).

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## Executive Summary

The Bench-Bar-Media Committee was formed by California Chief Justice Ronald M. George in March 2008. It was created to foster improved understanding and working relationships among California judges, lawyers, and journalists. Chaired by Associate Justice Carlos R. Moreno of the Supreme Court of California, the committee includes appellate court justices, superior court judges, attorneys specializing in the First Amendment, a prosecutor, a criminal defense attorney, journalists, an academic, a superior court executive officer and a superior court public information officer (PIO).

### Issue Statement

A free and open society relies, in part, on an independent and accountable judiciary, a fair and just legal system, and a free and robust media. Although the roles and responsibilities of the bench, bar, and media can overlap, they can also compete. As early as 1965, the Judicial Council attempted to address competing interests with the creation of rules of court that would protect the integrity of the judicial process while providing access to court records and proceedings. In subsequent years, the council revisited the issue of media access and amended the rules of court to allow cameras in proceedings under certain circumstances. The rules of court have continued to be re-examined in response to a changing media and significant changes to its tools of the trade. In 1997, Chief Justice George addressed the long-standing tension between the rights to fair trial and free press: “While the courts have a fundamental duty to protect the fair and equal administration of justice, the public’s understanding of the justice system depends in large part on information provided by the media. There are times when the rights to fair trial and free press are at odds with each other. The ultimate duty of our judges is to balance these competing interests and find the best solution for all concerned.”<sup>1</sup>

In an effort to address the competing interests of the bench, bar, and media, the committee proposes recommendations that would increase media access to court proceedings and records, enhance education about the roles and responsibilities of each group, and help resolve inevitable conflicts in an effective manner that protects and promotes the administration of justice.

This report provides a synopsis of the issues, evaluations, and recommendations.

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<sup>1</sup> Judicial Council of Cal., *Photographing, Recording, and Broadcasting in the Courtroom: Guidelines for Judicial Officers* (1997), preface by Chief Justice Ronald M. George, Supreme Court of California, [www.courtinfo.ca.gov/reference/documents/photo.pdf](http://www.courtinfo.ca.gov/reference/documents/photo.pdf).

## **Purpose Statement**

Rather than receiving a formal charge, the committee was asked to identify and address the critical issues surrounding the relationships among the courts, attorneys, and media.

Accordingly, the committee developed the following purpose statement to guide its work.

The Bench-Bar-Media Committee should work to improve the system of justice and foster public trust and confidence in that system through cooperative and positive relationships among these three stakeholders on a statewide and regional basis. To address the committee's purpose, the following strategies have been identified:

- Identify and address the key issues affecting interactions among the three stakeholders;
- Encourage fair and accurate reporting;
- Propose recommendations on a variety of issues, such as the use of cameras in the courtroom, media access to public records, appropriate interaction with internet-based media not aligned with traditional media, creation of local or regional bench-bar-media committees, and development of media outreach programs that would include all three stakeholder groups;
- Eliminate unnecessary conflicts between the stakeholders without legal action, where possible, and improve the process of identifying and resolving those conflicts that require legal resolution;
- Discuss the creation of local or regional committees to communicate with the media and/or the courts on urgent or sensitive matters affecting all three stakeholder groups;
- Encourage the public and the media to learn about the judicial system, and the judicial branch to learn about the media; and
- Provide a forum for ongoing dialogue.

## **Recommendations and Declaration**

Justice Moreno formed three committee working groups: Access to Court Proceedings, Educational Programming, and Conflict Resolution. The working groups met by conference calls over a period of two years to study their particular focus areas and propose recommendations to the full committee. After vigorous debate and thorough discussions during numerous working group conference calls and four in-person committee meetings, the committee arrived at the following eleven recommendations and one declaration for the Judicial Council's consideration.

### **Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom**

- A. Amend Rule 1.150 of the California Rules of Court to set forth an explicit presumption that cameras and other recording devices are allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use.
- B. Amend rule 1.150 to require judges to make specific findings to prohibit or limit the use of cameras and other recording devices.
- C. Revise Judicial Council Form MC-510 (*Order on Media Request to Permit Coverage*) so that judges are required to state their findings regarding the use of cameras and other recording devices.

- D. Inform judicial officers and court staff of the importance of providing court security personnel with a copy of any order entered concerning the presence or use of cameras or other recording equipment.

### **Recommendation 2: Gag Orders**

Adopt a uniform statewide rule similar to those governing orders sealing records and consistent with the opinion in *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4<sup>th</sup> 1232, which:

- A. Requires specific findings of a legitimate competing interest that overrides the public's right of access and justifies some form of gag order;
- B. Limits the scope of any gag order to the narrowest restraint and shortest time period necessary to protect the overriding interest that has been identified;
- C. Provides a means for the public and the media to be notified of the filing of a gag order and gives them an opportunity to challenge at the earliest possible time any gag order that may be proposed or is entered;
- D. Provides for public notice of any application for or entry of a gag order by posting on local court websites within 5 court business days after filing or entry or, if that is not possible for any reason, forwarding such notice to the Judicial Council for publication on its website within the same 5 court business days required for posting online; and
- E. Develop a simple form that will facilitate challenges by pro per individuals to gag orders.

### **Recommendation 3: Orders Sealing Records**

- A. Develop a rule of court that requires all courts to post notice of any application for, or entry of, an order sealing a record on their local website within 5 court business days after filing or entry or, if that is not possible for any reason, send such notice to the Judicial Council for publication on its website within the same 5 court business days required for posting online;
- B. Provide judicial education regarding the proper process for determining when a record should be sealed as set forth in California Rules of Court rule 2.550 et seq.;
- C. Support statutory authorization specifically permitting the award of attorney's fees and costs—in civil matters only—to any party successfully challenging an order sealing a record or an application for sealing a record, with such fees and costs to be paid by the party or parties making the application; and
- D. Develop a simple form that will facilitate challenges by pro per individuals to orders sealing records.

### **Recommendation 4: Educational Content and Programs**

Support creation of educational content and programs to enhance relationships and cross-communication among the bench, bar, media, court staff, and public. To that end, the committee recommends the following:

- A. The content and programs should be designed for trial and appellate court justices, judges, and staff, as well as for the bar and media;<sup>2</sup>
- B. The Judicial Council should facilitate the creation of regional superior court academies and provide the superior courts with resources for their development;
- C. The content and programs should provide guidance on how to create and maintain local superior court bench-bar-media committees: and
- D. The AOC should create and maintain an online repository of resources that the courts can use to strengthen their educational programs regarding media relations and media access.

**Recommendation 5: Judicial Officer Training on Clear Presentation of Statements**

Develop training for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily grasped by the media and the public. This training should address (1) when to prepare a statement and (2) how to prepare a statement.

**Recommendation 6: Explanation of Legal Terminology**

Encourage trial courts to post glossaries or explanations of legal terminology in multiple languages to their websites for the benefit of the media and broad public.

**Recommendation 7: Additional Online Training Materials for Court Staff and Judges**

Post media-related training materials for the courts on a secure internal online site, such as Serranus.

**Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)**

- A. Implement a Regional Media Access Plan to address conflicts among the bench, bar, and media regarding access to the judicial process.<sup>3</sup>
- B. Direct the Bench-Bar-Media Implementation Working Group to seek the opinion of the Supreme Court's Committee on Judicial Ethics Opinions (CJEO) to determine whether there are any ethical constraints on judges participating in the Regional Media Access Plan. Specifically, the working group should seek clarification as to whether it is proper for a judge who has communicated with an attorney or media member with an interest in a particular case to offer advice or assistance to the judge sitting on that case.

**Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions**

Direct the Administrative Director of the Courts to create and fund three public information officer positions, with one position assigned to each of the AOC's three regional offices, when funds are available. The primary responsibilities of the three recommended regional PIOs would include assisting local courts with the following: 1) coordination of media activities in high-

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<sup>2</sup> See Appendix 1, Recommended Educational Content, Recommendation 4 of the Bench-Bar-Media Committee.

<sup>3</sup> See Appendix 2, Regional Media Access Plan, Recommendation 8 of the Bench-Bar-Media Committee.

profile cases; 2) response to other complex media situations; and 3) community outreach efforts and general media relations.

#### **Recommendation 10: Implementation Working Group**

Following the Judicial Council's receipt of the final report, direct the Administrative Director of the Courts to appoint a Bench-Bar-Media Implementation Working Group to assist AOC staff with developing a plan to implement the committee recommendations and to assist AOC staff with implementation.

#### **Recommendation 11: Implementation Plan**

Following the Judicial Council's receipt of the final report, direct the Administrative Director of the Courts to provide for consideration at a designated 2011 Judicial Council business meeting an implementation plan. This plan would address:

- The cost of implementing each recommendation in terms of estimated expenses and court and AOC staff resources.
- Whether any of the recommendations will necessitate referral to internal and/or external entities (e.g., other council advisory committees, other AOC divisions).
- Whether implementation of any of the recommendations will require any legislative action.
- A timeline for implementation of each recommendation.
- Prioritization of the recommendations for implementation.

#### **Declaration: Reducing the Cost of Trial Transcripts for the Media**

The Bench-Bar-Media Committee has concluded that representatives of the California Newspaper Publishers Association and other media should meet with representatives of court reporters unions and/or associations and attempt to develop a special protocol and pricing formula, which could both provide court reporters with opportunities for additional income without jeopardizing their current right to compensation from litigants for preparing transcripts, and also give the media an opportunity to obtain limited partial transcripts at a reasonable cost to assist them in preparing accurate accounts of court proceedings for publication. If those representatives meet and are able to reach agreement upon a modification of the current system that requires some change in rules of court and/or California statute, they should make an appropriate joint recommendation to the judicial branch and/or the Legislature.

To view and comment on this report, please visit the California Courts Website at [www.courtinfo.ca.gov/invitationstocomment/](http://www.courtinfo.ca.gov/invitationstocomment/).

Additional information regarding the Bench-Bar-Media Committee is located at [www.courtinfo.ca.gov/jc/tflists/benchbarmedia.htm](http://www.courtinfo.ca.gov/jc/tflists/benchbarmedia.htm).

## Committee: Background, Issue Statement, Purpose Statement, and Process

### Background

In March 2008, Chief Justice Ronald M. George formed the Bench-Bar-Media Steering Committee and appointed 14 members. The committee was established to foster improved understanding and working relationships among California judges, lawyers, and journalists. The Chief Justice appointed Associate Justice [Carlos R. Moreno](#) of the Supreme Court of California as chair of the committee.

“By working together, the bench, bar, and news media can improve our understanding of each other’s functions and develop practices in areas of common concern that will improve the operation of the legal system and promote greater public understanding of the courts,” said Chief Justice George.<sup>4</sup>

The Bench-Bar-Media Committee was originally created as a steering committee; it was intended that a larger committee would be formed later to study the areas identified by the steering committee. The original members of the steering committee included a justice, superior court judges, journalists, First Amendment advocates, a prosecutor, and a criminal defense attorney. At its first business meeting, the members concluded that instead of continuing as a steering committee, the members should serve as a full committee and delve into the relevant issues. They also decided that new members with extensive media experience should be recruited to serve on the committee and that these new members should include:

- An academic;
- A superior court executive officer;
- A superior court public information officer; and
- Journalists who cover legal issues and the courts.

Accordingly, in December 2008, the committee was asked to nominate professionals who could serve on the committee. In March 2009, the Chief Justice reviewed the candidates and appointed the new members. From this point forward, the committee’s 24 members would explore all relevant issues and make recommendations to the Judicial Council.

The committee has a two-year term and is scheduled to sunset in December 2010. It met in person at the AOC’s San Francisco offices on:

- December 16, 2008;
- May 12, 2009;
- October 29, 2009; and

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<sup>4</sup> Judicial Council of Cal., “Chief Justice George Names Bench Bar Media Steering Committee,” News Release No. 12 (March 18, 2008), [www.courtinfo.ca.gov/jc/tflists/benchbarmedia.htm](http://www.courtinfo.ca.gov/jc/tflists/benchbarmedia.htm).

- April 12, 2010.

The committee expects to hold its final meeting in early December 2010 to review the public's comments regarding this draft report and to prepare a final version. The committee plans to present a final report to the Judicial Council in spring 2011.

## **Issue Statement**

A free and open society relies, in part, on an independent and accountable judiciary, a fair and just legal system, and free and robust media. Although the roles and responsibilities of the bench, bar, and media can overlap, they can also compete. As early as 1965, the Judicial Council attempted to address competing interests with the creation of rules of court that would protect the integrity of the judicial process while providing access to court records and proceedings. In subsequent years, the council revisited the issue of media access and amended the rules of court to allow cameras in proceedings under certain circumstances. The rules of court have continued to be reexamined in response to the changing media and significant changes to their tools of the trade.

In 1997, Chief Justice Ronald M. George addressed the long-standing tension between the rights to fair trial and free press. "While the courts have a fundamental duty to protect the fair and equal administration of justice," he wrote, "the public's understanding of the justice system depends in large part on information provided by the media. There are times when the rights to fair trial and free press are at odds with each other. The ultimate duty of our judges is to balance these competing interests and find the best solution for all concerned."<sup>5</sup>

## **Purpose Statement**

Rather than receiving a formal charge, the committee was asked to identify the critical issues surrounding the relationships among the courts, attorneys, and media. Accordingly, the committee developed the following purpose statement to guide its work.

The Bench-Bar-Media Committee should work to improve the system of justice and foster public trust and confidence in that system through cooperative and positive relationships among these three stakeholders on a statewide and regional basis. To address the committee's purpose, the following strategies have been identified:

- Identify and address the key issues affecting interactions among the three stakeholders;
- Encourage fair and accurate reporting;
- Propose recommendations on a variety of issues, such as the use of cameras in the courtroom, media access to public records, appropriate interaction with internet-based

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<sup>5</sup> Judicial Council of Cal., *Photographing, Recording, and Broadcasting in the Courtroom: Guidelines for Judicial Officers* (1997), preface by Chief Justice Ronald M. George, Supreme Court of California, [www.courtinfo.ca.gov/reference/documents/photo.pdf](http://www.courtinfo.ca.gov/reference/documents/photo.pdf).

media not aligned with traditional media, creation of local or regional bench-bar-media committees, and development of media outreach programs that would include all three stakeholder groups;

- Eliminate unnecessary conflicts between the stakeholders without legal action, where possible, and improve the process of identifying and resolving those conflicts that require legal resolution;
- Discuss the creation of local or regional committees to communicate with the media and/or the courts on urgent or sensitive matters affecting all three stakeholder groups;
- Encourage the public and the media to learn about the judicial system, and the judicial branch to learn about the media; and
- Provide a forum for ongoing dialogue.

### Process for Development of Recommendations

The chair formed three working groups to further identify the related issues and produce the committee's draft recommendations.<sup>6</sup> The working groups held numerous conference calls during two years to arrive at proposed recommendations for consideration by the committee. Associate Justice Steven Perren of the Court of Appeal, Second Appellate District, Division Six, served as liaison from the Judicial Council's Criminal Law Advisory Committee and graciously agreed to facilitate committee discussions on proposed recommendations. The working group members also communicated by e-mail. Each recommendation was the result of lively debate, both at the working group and committee level. The working groups and their areas of focus are:

- **Access to Court Proceedings Working Group.** This working group explored the sealing of case records and cases, gag orders, the use of cameras and other recording devices in the courtroom, and the cost of court reporter transcripts.
- **Conflict Resolution Working Group.** This working group directed its attention to the development of a recommended plan to more effectively resolve conflicts that arise among the bench, bar, and media during coverage of a court proceeding. The working group also explored the need to create public information officer positions within the three AOC regional offices to assist courts with the coordination of media activities in high-profile cases, response to other complex media situations, community outreach efforts, and enhancement of general media relations.
- **Educational Programming Working Group.** Members of this working group developed suggestions to enhance relationships and cross-communication among the bench, bar, media, court staff, and general public. It also addressed additional training for judges and justices on how to present the meaning or substance of court decisions in a manner that is easily understood by the public and media. Additionally, the working group explored the dissemination of online legal glossaries to aid the public and the creation of an online repository of training materials that the courts can use to more effectively interact with the media.

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<sup>6</sup> See Appendix 3, Roster of the Bench-Bar-Media Committee by Working Groups.



The committee attempted to achieve unanimity with its recommendations. As it addressed more issues, it found that consensus could not always be achieved. In such instances, a vote was taken, and if a recommendation was approved by the majority, it was deemed to have passed. This report notes the instances in which votes were taken and indicates the results of those votes. Summaries of dissenting viewpoints are also included.

Additional information concerning the Bench-Bar-Media Committee can be found at [www.courtinfo.ca.gov/jc/tflists/benchbarmedia.htm](http://www.courtinfo.ca.gov/jc/tflists/benchbarmedia.htm).

# Access to Court Proceedings

## Background

The recommendations set forth in this section relate to the following strategies of the committee's purpose statement:

- Identify and address the key issues affecting interactions among the three stakeholders; and
- Propose recommendations on a variety of issues, such as the use of cameras in the courtroom, media access to public records, appropriate interaction with internet-based media not aligned with traditional media, creation of local or regional bench-bar-media committees, and development of media outreach programs that would include all three stakeholder groups.

These recommendations address the media's access to court proceedings and court records and came after vigorous debate. The discussions underscored the sometimes competing interests among the bench, bar, and media. The discussions also reflected the immense mutual respect the three groups have for each other and the recognition that the fulfillment of their roles and responsibilities is necessary for a free, fair, and just legal system.

When the committee was first formed, the judicial branch was not subject to statutes governing access to judicial administrative records. However, in fall 2009, the Legislature required the Judicial Council to create court rules that gave greater public access to court administrative records. New rules 10.500 and 10.501<sup>7</sup> of the California Rules of Court went into effect January 1, 2010. The rules essentially create greater public access to judicial administrative records held by all of California's courts, the Judicial Council, and the Administrative Office of the Courts. The adoption of these rules represents a trend toward greater transparency of the California judicial branch.

The Access to Court Proceedings Working Group developed numerous versions of the following recommendations and presented them to the committee at its business meetings. The resulting recommendations are the product of extensive debate and exploration of potential ramifications.

## Recommendations 1–3

### Recommendation 1: Use of Cameras and Other Recording Devices in the Courtroom

- A. Amend Rule 1.150 of the California Rules of Court to set forth an explicit presumption that cameras and other recording devices are allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use.

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<sup>7</sup> The full text of rules 10.500 and 10.501 of the California Rules of Court may be found online at [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules).

- B. Amend rule 1.150 to require judges to make specific findings to prohibit or limit the use of cameras and other recording devices.
- C. Revise Judicial Council Form MC-510 (*Order on Media Request to Permit Coverage*) so that judges are required to state their findings regarding the use of cameras and other recording devices.
- D. Inform judicial officers and court staff of the importance of providing court security personnel with a copy of any order entered concerning the presence or use of cameras or other recording equipment.

### **Previous Council Action**

The Judicial Council first adopted rule 980 of the California Rules of Court on November 9, 1965, under the leadership of then–Chief Justice Roger J. Traynor.<sup>8</sup> Several years of study had led the council to conclude that media coverage of court proceedings interfered with the individual’s right to a fair trial, so the original rule 980 prohibited photographing, recording, and broadcasting in the courtroom during court sessions or recesses. Exceptions were made for media coverage during ceremonial proceedings and coverage before and after daily court sessions.

In 1966, at the request of the Assembly Interim Committee on Fair Trial and Free Press, the council adopted temporary rule 981, which permitted a limited number of experiments in courtroom photography for use in connection with the committee’s studies. These experiments were held from June 1 to December 31, 1966, with the permission of all trial participants. The photographs taken during the experiments could not be used for general broadcast or commercial purposes.

The issue of cameras in courtrooms resurfaced in 1979, when then–Chief Justice Rose Elizabeth Bird appointed the Special Committee on the Courts and the Media to consider the question of media coverage of court proceedings. The council adopted an experimental rule specifying a trial period of film and electronic coverage beginning on July 1, 1980, after which the effects of film and electronic media coverage were evaluated. This study culminated in the adoption of a new rule 980 that allowed film and electronic media coverage of criminal and civil courtroom proceedings at the trial and appellate levels. The new rule took effect on July 1, 1984.

In October 1995, rule 980 again came under examination by the Judicial Council when the Task Force on Photographing, Recording, and Broadcasting in the Courtroom was appointed by then–Chief Justice Malcolm M. Lucas and charged with evaluating:

- Whether rule 980 should be amended;
- If criteria to be applied by the court in determining whether to allow film and electronic equipment in courtrooms should be revised;
- Whether film and electronic media coverage should be prohibited in all state court proceedings, in certain types of proceedings, or in certain portions of proceedings;

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<sup>8</sup> The following rule history is taken from the Judicial Council of Cal., *Photographing, Recording, and Broadcasting in the Courtroom: Guidelines for Judicial Officers* (1997), pp. 1–2, [www.courtinfo.ca.gov/reference/documents/photo.pdf](http://www.courtinfo.ca.gov/reference/documents/photo.pdf).

- Whether there should be an expansion of the circumstances under which film and electronic media coverage of state court proceedings is now permitted; and
- The criteria for the operation of cameras and other electronic recording equipment, including pool cameras, in courtrooms.

The 13-member task force, chaired by Associate Justice Richard D. Huffman of the Court of Appeal, Fourth Appellate District, Division One, consisted of judges, attorneys, and court administrators who had extensive experience with high-profile cases covered by the media. The final report of the task force was issued in May 1996.

After considering the final report and recommendations of the task force, the Judicial Council on May 17, 1996, voted to retain judicial discretion over the use of cameras in state courts. Rule 980, which specifies the conditions under which electronic media coverage is permitted in state courtrooms, was amended, effective January 1, 1997. The amended rule:

- Retained judges' discretion over the use of cameras in all areas, including all pretrial hearings in criminal cases;
- Prohibited camera coverage of jury selection, jurors, or spectators in the courtroom; and
- Listed 19 factors a judge must consider in ruling on a request for camera coverage, including the importance of maintaining public access to the courtroom, the privacy rights of the participants in the proceedings, and the effect on the parties' ability to select an unbiased jury.

Rule 980 was again amended, effective January 1, 2006, to address changes in technology. Specifically, it provided definitions of "photographing," "recording," and "broadcasting" that encompassed digital technology and mixed-use devices (such as cell phones) that could be used to take photos or make oral recordings. Rule 980 was amended once again effective January 1, 2007, and renumbered as rule 1.150.<sup>9</sup>

## **Rationale for Recommendation**

### ***Regarding Recommendation 1 – Sub-part A (Explicit Presumption)***

The use of cameras and other recording devices in California's courtrooms was a major issue to which the committee dedicated significant time and consideration. Rule 1.150 of the California Rules of Court addresses the photographing, recording, and broadcasting of courtroom proceedings.

Committee members stated that judges appear to frequently deny the use of cameras and other recording devices in courtrooms without providing any reasons for the prohibition. The media is required to submit its request to the court to record court proceedings on Judicial Council Form MC-500, *Media Request to Photograph, Record, or Broadcast*.<sup>10</sup> Rule 1.150(e)(3) lists the factors for judges to consider when the media has requested an order to record proceedings.

<sup>9</sup> The full text of rule 1.150 of the California Rules of Court may be found online at [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules).

<sup>10</sup> See Appendix 4, Form MC-500 *Media Request to Photograph, Record, or Broadcast*.

However, per rule 1.150(e)(4), “[t]he judge ruling on the request to permit media coverage is not required to make findings or a statement of decision.” Committee members representing the media stated that when a judge issues an order denying the use of recording devices without any express findings, the media is left without any grounds to challenge the order.

Furthermore, committee members from the media conveyed that it appears that judges are increasingly denying electronic recording in the courtroom as a matter of course. The prohibition often is extremely broad, banning the use of audio recorders, laptops, and other electronic devices. The committee viewed these concerns as critical and warranting consideration because the media cannot appeal the judge’s decision.

The committee reviewed rule 1.150 and concluded that the presumption of the existing rule should be changed to support greater access to court proceedings. Rule 1.150(c) states the following presumption: “Except as provided in this rule, court proceedings may not be photographed, recorded, or broadcast.” The members determined that this wording creates a presumption for the denial of media requests. The committee concluded that, rather than limiting or denying the media’s coverage of court proceedings, courts should provide greater access to the media and, thereby, to the public. The public relies increasingly on television and the Internet for news. Journalists increasingly rely on video and audio feeds for their newsgathering. Courts should be responsive to the public’s increasing reliance on electronic technology and consider how they can support such newsgathering while still protecting the interests and rights of litigants, witnesses, jurors, and others who rely on the integrity of the court system. The committee referred to the presumption of openness found in Washington Rules of Court, General Rule 16, Courtroom Photography and Recording by the News Media.<sup>11</sup>

After significant consideration, the committee concluded that the presumption of rule 1.150 should be changed to expressly allow for photography, recording, and broadcasting unless sufficient reasons exist to prohibit or limit the use of recording devices.

This change in presumption would not in any way limit or modify a judge’s discretion to allow or deny recording. Under the proposed amendment, judges would still be required to consider the factors listed in rule 1.150(e)(3) and would have full authority to rule on the appropriateness of recording. The committee reviewed the factors listed in rule 1.150(e)(3) and found them to be comprehensive and not needing modification.

This recommendation also maintains the requirement that the media request permission to use cameras and other recording devices in the courtroom. Under rule 1.150(e)(1), the media would still be required to request an order to photograph, record, or broadcast.

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<sup>11</sup> See Appendix 5, Washington Rules of Court, General Rule 16, Courtroom Photography and Recording by the News Media.

The committee also observed that courts increasingly encounter a growing universe of electronic devices that can capture images and/or record sound (e.g., mini-videocameras, WIFI transceivers, cell phones, smartphones, personal digital assistants (PDAs), and laptop computers). Members of the media have expressed concern that these personal devices are banned in courtrooms and sometimes confiscated by security at the court entrance. However, one reason that courts prohibit the use of these electronic devices is because potentially they can be used for recording. While the recordings are generally not of the quality used by news broadcasting agencies, they have made their way online inappropriately and in violation of court orders. This balancing between the public's desire to use personal electronic devices while in court and the court's duty to protect the integrity of proceedings will continue and will become more complex with the development of other technologies.

This recommendation focuses only on the use of recording devices in courtrooms and not in other areas of the courthouse, such as lobbies, hallways, and media rooms. Some courts have developed local rules that address access to areas outside of the courtroom.

***Regarding Recommendation 1 – Sub-part B (Specific Findings)***

The committee also recommends that the council amend rule 1.150 to require judges to make specific findings to allow, prohibit, or limit the use of cameras and other recording devices. As stated earlier, per rule 1.150(e)(4), “[t]he judge ruling on the request to permit media coverage is not required to make findings or a statement of decision.” Without any findings expressly stated, the media has no grounds to appeal a decision. The committee also determined that denials without any supporting rationale do not educate the media as to relevant privacy rights, concerns regarding interference with court proceedings, or other legal issues warranting the denial. The committee has concluded that courts should take every opportunity to explain court decisions and proceedings so that ultimately the public better understands its court system. Accordingly, the committee recommends that judges be required to expressly state their findings.

***Regarding Recommendation 1 – Sub-part C (Amend Form MC-510)***

Judges issue their orders regarding photography, recording, and broadcasting on Judicial Council form MC-510, *Order on Media Request to Permit Coverage*.<sup>12</sup> Item 3 of the form allows judges to state their findings, but this action is optional. The committee therefore recommends that this form be revised to require judges to expressly state the findings that support their orders.

***Regarding Recommendation 1 – Sub-part D (Provide Court Security Personnel with Orders re Recording Devices)***

The committee recommends that the Administrative Office of the Courts educate judicial officers and court staff on the importance of providing court security personnel with a copy of any order entered concerning the presence or use of cameras or other recording equipment. Committee members noted that although a judge may issue an order allowing the use of recording devices, court security personnel are often not informed of the order. As a result, the security personnel

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<sup>12</sup> See Appendix 6, Judicial Council form MC-510, *Order on Media Request to Permit Coverage*.

sometimes confiscate the recording equipment. To ensure that the judge's order is followed and that the media has the ability to photograph, record, and broadcast when authorized to do so, it is recommended that additional education be provided to judicial officers and court staff on this issue.

### **Dissenting View by One Member**

One judicial member of the committee dissented with this recommendation. The member stated that changing the presumption would constitute too much of a change. The member further suggested that this change in presumption would not leave the court with the same discretion to forbid cameras. The member also stated that there is substantial opposition to cameras in the courtroom from the judiciary and criminal defense bar. It was also noted that there is room for changing the rule when it comes to other proceedings (such as motions and arraignments) and to allow greater "still" camera coverage.

### **Alternatives Considered and Policy Implications**

If rule 1.150 is amended to state an explicit presumption that cameras and other recording devices be allowed in the courtroom unless sufficient reasons exist to prohibit or limit their use, the courts might encounter an increase in the number of requests from the media to record proceedings. Judges would also be required to make specific findings to prohibit or limit the use of cameras and other recording devices and to state these findings on a revised Judicial Council form MC-510. These requirements would create additional responsibilities for judges. However, the committee has concluded that these new responsibilities are essential to allowing media access when it is appropriate and communicating to the media the rationale for decisions regarding their ability to record proceedings.

### **Implementation Requirements, Costs, and Operational Impacts**

The development of a new rule of court or the amendment of the existing rule, as well as the revision of Judicial Council forms, will require AOC staff time, specifically from the AOC Office of the General Counsel and Executive Office Programs Division. In addition, staff from the AOC Education Division/Center for Judicial Education and Research (CJER) would need to develop content and resources for the above-described judicial education.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

Goal I: Access, Fairness, and Diversity

### **Recommendation 2: Gag Orders**

Adopt a uniform statewide rule similar to those governing orders sealing records and consistent with the opinion in *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4<sup>th</sup> 1232, which:

- A. Requires specific findings of a legitimate competing interest that overrides the public's right of access and justifies some form of gag order;

- B. Limits the scope of any gag order to the narrowest restraint and shortest time period necessary to protect the overriding interest that has been identified;
- C. Provides a means for the public and the media to be notified of the filing of a gag order and gives them an opportunity to challenge at the earliest possible time any gag order that may be proposed or is entered;
- D. Provides for public notice of any application for or entry of a gag order by posting on local court Websites within 5 court business days after filing or entry or, if that is not possible for any reason, forwarding such notice to the Judicial Council for publication on its Website within the same 5 court business days required for posting online; and
- E. Develop a simple form that will facilitate challenges by pro per individuals to gag orders.

### **Previous Council Action**

None.

### **Rationale for Recommendation**

The issuance of gag orders was a significant issue that led to numerous committee discussions. Committee members expressed concerns about their frequency, breadth, and lack of finding. Gag orders appear to be increasingly common and issued not only in high-profile cases but in cases of little interest to the public. Members of the committee representing the bar and media described the breadth of gag orders as unnecessarily broad and causing a chilling effect on law enforcement personnel, attorneys, and others. For instance, some gag orders have stated that the parties and their agents cannot release any information or opinions concerning the case or issues that may be raised by the case. In addition, the gag orders often make only a broad reference to fair trial concerns and do not state any findings to explain the judge's decision to issue the gag order. This leaves the media unclear as to why they cannot receive additional information from the parties or their attorneys.

Another concern was the lack of opportunity to challenge a gag order. Because judges are not required to hold hearings when issuing such orders, the media often does not have an opportunity to voice its opposition. Also, retaining counsel to oppose a gag order is often too costly. The issue of standing was discussed in-depth. Committee members stated that some judges have questioned whether journalists have standing to oppose such orders.

In response to these concerns, the committee developed the above five-pronged recommendation. Currently, there is no single authority governing the issuance of gag orders. Instead, there is a wide array of federal and state case law, which addresses gag orders in a fractured and disparate manner. Accordingly, the committee recommends that a new California rule of court be developed.



***Regarding Recommendation 2 – Sub-part A (Specific Findings)***

So that the media and general public better understand the rationale behind a gag order, the committee recommends that judges make specific findings of a legitimate competing interest that overrides the public's right of access and justifies some form of gag order.

***Regarding Recommendation 2 – Sub-part B (Limits to Gag Orders)***

The committee has concluded that the scope of gag orders should be as narrow as possible to preserve the public's right to know. It, therefore, recommends that the rule require judges to limit the scope of any gag order to the narrowest restraint and shortest time period necessary to protect the overriding interest that has been identified.

***Regarding Recommendation 2 – Sub-part C (Notice)***

The committee also recommends that the new rule provide a means for the public and the media to be notified of the filing of a gag order and, thereby, given an opportunity to challenge at the earliest possible time any gag order that may be proposed or is entered. The members of the committee representing the media asked for the opportunity to be heard. Accordingly, the rule should clarify that the media has standing to challenge gag orders. The committee as a whole agreed that members of the media, along with the general public, should have the ability to state their concerns and voice their opposition.

***Regarding Recommendation 2 – Sub-part D (Online Notice)***

To ensure that the media is notified of pending or issued gag orders, the committee determined that the new rule of court should provide for public notice of any application for or entry of a gag order by posting it on a local court website within five court business days after filing or entry or forwarding such notice to the Judicial Council for publication on the California Courts website in the same manner as recommended for applications or orders concerning the sealing of court records. The committee intends that the definition of "court business days" is the days the court is open for business. Excluded would be weekends, state holidays, and any days that the courts are closed in response to the state fiscal crisis. If the applications for or entries of gag orders are posted on the court's or the California Courts website, the media will be able to search known online locations to determine if gag orders on a case of interest are pending or already issued.

***Regarding Recommendation 2 – Sub-part E (Form for Pro Pers)***

The committee also concluded that a standard form to assist pro per individuals (including members of the media and general public) with their challenges to gag orders should be developed by the council. Because pro per challenges are made without the assistance of legal counsel, the branch should develop a form that will enable pro pers to easily provide the information needed by the court to evaluate their argument that communications, especially to the media, should not be limited or entirely prohibited.

### **Dissenting View by One Member**

Because consensus did not exist on the third and fourth prongs of this recommendation, the committee voted on subsections (A) and (B) separately from subsections (C) and (D). The committee unanimously approved subsections (A) and (B). With one nay, the committee approved of subsections (C) and (D). Subsection (E) was added to this recommendation during the drafting of the report and unanimously approved by the committee.

### **Alternatives Considered and Policy Implications**

The committee considered recommending that a new rule of court require judges to hold a hearing and weigh an enumerated list of factors to determine if a gag order should be issued. After some discussion, it was determined that requiring a hearing would be unduly burdensome for the courts. The committee concluded that providing the media with a mechanism to voice its opposition and a subsequent forum to challenge a gag order were sufficient.

The policy implications of this recommendation are significant. Requiring specific findings, narrowly constraining gag orders, providing notice of pending or existing orders, and developing a form to aid pro per challenges of gag orders all increase public trust in the courts and shed light on its decision making process. Some sectors of the judicial branch may find the proposed requirements of this new rule to be overly burdensome for the courts, but as the public seeks more information about the cases that courts process and about the courts themselves, the judicial branch should become increasingly transparent.

### **Implementation Requirements, Costs, and Operational Impacts**

The development of a new rule of court and Judicial Council form will necessitate significant AOC staff resources, specifically from the Office of the General Counsel and the Executive Office Programs Division.

If the proposed rule is ultimately approved by the council, the superior courts will be responsible for providing a means for the public and the media to be notified of the filing of a gag order and an opportunity to challenge such an order. The courts will also have the new responsibility of posting notice of any application for or entry of a gag order on the court's website within five court business days or forwarding such notice to the Judicial Council within the same five court business days so that the information can be posted to the California Courts website.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

Goal I: Access, Fairness, and Diversity

Goal IV: Quality of Justice and Service to the Public

### Recommendation 3: Orders Sealing Records

- A. Develop a rule of court that requires all courts to post notice of any application for, or entry of, an order sealing a record on their local Website within 5 court business days after filing or entry or, if that is not possible for any reason, send such notice to the Judicial Council for publication on its Website within the same 5 court business days required for posting online;
- B. Provide judicial education regarding the proper process for determining when a record should be sealed as set forth in California Rules of Court rule 2.550 et seq.;
- C. Support statutory authorization specifically permitting the award of attorney's fees and costs—in civil matters only—to any party successfully challenging an order sealing a record or an application for sealing a record, with such fees and costs to be paid by the party or parties making the application; and
- D. Develop a simple form that will facilitate challenges by pro per individuals to orders sealing records.

### Previous Council Action

The Judicial Council first adopted rules 243.1 and 243.2 on October 27, 2000, to guide the resolution of motions to seal records in the courts. At that time, there were no comprehensive, statewide rules for the appellate and trial courts on the sealing of records. In October 2003, the council approved amendments to the rules (effective January 1, 2004) that addressed the following issues: (1) clarifying the standard to be considered for unsealing records in the trial and appellate courts, (2) specifying that express factual findings are required to seal records, and (3) providing a party who has asserted that confidential documents were obtained through discovery with notice and an opportunity to request a sealing order in the trial court when another party intends to use the documents for adjudication but does not intend to request that they be sealed. Effective January 1, 2007, rules 243.1 and 243.2 were amended and renumbered as rules 2.550 and 2.551 to conform to new formatting and organization requirements.<sup>13</sup>

Rules 2.550 and 2.551 provide a standard and procedures for courts to use when a request is made to seal a record. The standard is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178. These rules apply to civil and criminal cases. They recognize the First Amendment right of access to documents used at trial or as a basis of adjudication. The rules do not apply to records that courts must keep confidential by law. Examples of confidential records to which public access is restricted by law include records of the family conciliation court (Fam. Code, § 1818(b)), in forma pauperis applications (Cal. Rules of Court, rule 985(h)), and search warrant affidavits sealed under *People v. Hobbs* (1994) 7 Cal.4th 948. The rules for sealed records also do not apply to discovery proceedings, motions, and materials that are not used at trial or submitted to the court as a basis for adjudication. (See *NBC Subsidiary, supra*, 20 Cal.4th at pp. 1208–1209, fn. 25.)

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<sup>13</sup> The full text of rules 2.550–2.551 of the California Rules of Court may be found online at [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules).

### **Rationale for Recommendation**

Committee members representing the media conveyed that they are often not aware that courts have sealed records or even that some cases exist. These concerns were echoed when it came to light that one California superior court judge had sealed an entire civil case, which could have become a high-profile case because of the parties involved. Because the entire case was sealed, it did not appear on the court's docket. However, a reporter inadvertently discovered the case while sitting in the courtroom to observe another case. After significant discussion, the committee concluded that new measures should be taken to disclose the sealing of records and entire cases to the media and public. New efforts should also be undertaken to ensure that orders to seal are made in accordance with rules 2.550–2.551.

#### ***Regarding Recommendation 3 – Sub-part A (Online Notice)***

The primary concern of members was providing the media with some form of notice as to when an application for a sealing order has been made and when the court has issued an order to seal a record. The committee discussed various options for notifying the media and concluded that posting information online was the most efficient course of action. Members from the media requested that applications for and entries of orders sealing records be posted to one central website, such as the California Courts website (the website for the California judicial branch). However, committee members from the courts stated that, in respect of court autonomy, courts should not be required to forward this information to the AOC for posting but should instead be allowed to post this information on their local court websites if they have the appropriate staff to do so. Recognizing that some courts do not have sufficient staff to routinely modify their web content, the committee concluded that the recommendation should state that courts post applications for and entries of orders sealing records to their local websites if possible and, if not possible, send such notice to the Judicial Council for posting on the California Courts website. The committee also concluded that five court business days (meaning days in which California's superior courts are open for business) was sufficient time for the courts to post the information online or submit it to the Judicial Council for posting on the California Courts website.

#### ***Regarding Recommendation 3 – Sub-part B (Judicial Education)***

Committee members reported that on occasion judges have issued orders to seal records that stated vague or minimal factual findings to justify the sealing. These orders do not provide sufficient detail to explain to the public why records have been sealed. The committee reviewed the express factual findings required by rule 2.550(d) and concluded that they are sufficient. Rather than modifying this section of the rule, the members determined that additional training for judges regarding the proper process for determining when a record should be sealed as provided in rule 2.550 et seq. is necessary.

#### ***Regarding Recommendation 3 – Sub-part C (Attorney's Fees and Costs)***

Committee members raised the concern that litigants often make frivolous requests to seal records. However, the cost to challenge a sealing order can be prohibitive and can therefore prevent others from challenging sealing orders. The committee concluded that awarding attorney's fees and costs in civil matters to any party successfully challenging an order sealing a

record or an application for sealing a record would discourage future frivolous requests to seal records. The committee recommends that attorney's fees and costs be paid by the party or parties making the application. This recommendation applies only to civil cases and does not apply to criminal matters.

The committee recognizes that this recommendation deals with substantive law, which is not within the Judicial Council's rule-making purview. The committee realizes that the council is constitutionally responsible for rules for court administration and rules of practice and procedure that do not conflict with statute. However, the committee considers this subject to be critical and therefore makes a recommendation that the council support related legislation.

### ***Regarding Recommendation 3 – Sub-part D (Form to Facilitate Pro Per Challenges)***

The committee also concluded that the judicial branch should develop a standard form to assist challenges to sealing orders by pro pers. The form would enable pro pers—including members of the media—to easily provide the information needed by the court to evaluate their arguments against the sealing of the records.

### **Dissenting View by One Member**

Because there did not appear to be consensus regarding this recommendation, the committee voted on whether it should be proposed to the council. With the exception of one nay vote, all committee members present at the meeting voted in support of the recommendation.

The member who voted against the recommendation had various concerns. The member stated that listing each case where there is an application or an order to seal records will draw unnecessary attention to the case. It was also noted that such a requirement would increase motions to unseal records and would create more work for the courts. The member noted that rule 2.550 is well-crafted and, if followed, is appropriate and that more judges should be educated on the topic. The member emphasized that every case file that has a sealed record should contain a redacted copy of the sealed document as well as a sealing order. The media can recognize that something is missing from the file and make the appropriate motion to unseal the record. With respect to attorney's fees, the dissenting member argued they should be available to either side in a legal fight over sealed records—not just to the party who successfully unseals a record. A party who has attained a sealing order for appropriate reasons (e.g., protecting the privacy of a minor) should also be able to obtain attorney's fees if the sealed order is unsuccessfully challenged.

### **Alternatives Considered and Policy Implications**

In the earlier stages of discussion, the committee considered significant amendments to rules 2.550–2.551. However, the committee came to the conclusion that the existing rules are adequate. What appeared to be lacking was consistency in how judges applied the rules. Consequently, the committee proposed additional judicial education so that appropriate educational courses and resources could be developed.

### **Implementation Requirements and Operational Impacts**

If the proposed changes are accepted by the council and incorporated in amended or new rules of court, the courts would have the new responsibility of posting notices of applications for and entries of sealing orders on their local websites within five court business days after filing or entry. If the court does not have technical staff to perform this function, it will be required to send such notice to the Judicial Council for publication on the California Courts website. While these functions create an operational impact on the courts, the members of the committee determined that five court business days was a feasible time frame for the courts to post or forward the information. As stated earlier, the committee intends that the phrase “court business days” would mean days the court is open for business and would exclude weekends, state holidays, and any days that the courts are closed in response to the state fiscal crisis.

The development of a new rule of court or the amendment of an existing rule will require the use of AOC staff time, specifically from the AOC Office of the General Counsel and the Executive Office Programs Division. Staff from the AOC Education Division/CJER would be needed to develop content and resources for the above-described judicial education. The AOC Office of Governmental Affairs would need to assist with any efforts to support statutory authorization specifically permitting the award of attorneys’ fees and costs—in civil matters only—to any party successfully challenging an order sealing a record or an application for sealing a record.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

Goal I: Access, Fairness, and Diversity

Goal IV: Quality of Justice and Service to the Public

### **Declaration: Reducing the Cost of Trial Transcripts for the Media**

The Bench-Bar-Media Committee has concluded that representatives of the California Newspaper Publishers Association and other media should meet with representatives of court reporters unions and/or associations and attempt to develop a special protocol and pricing formula, which could both provide court reporters with opportunities for additional income without jeopardizing their current right to compensation from litigants for preparing transcripts, and also give the media an opportunity to obtain limited partial transcripts at a reasonable cost to assist them in preparing accurate accounts of court proceedings for publication. If those representatives meet and are able to reach agreement upon a modification of the current system that requires some change in rules of court and/or California statute, they should make an appropriate joint recommendation to the judicial branch and/or the Legislature.

### **Previous Council Action**

The rate for certified transcripts is set by California Government Code section 69950. From 2002 to 2004, the Judicial Council’s Reporting of the Record Task Force met to discuss numerous issues surrounding court reporting services in California, including the cost of criminal transcripts. While court reporters are employees of California’s superior courts, they are independent contractors when producing and finalizing the transcript and, as such, sell transcripts

to the courts. The task force focused only on the cost of criminal transcripts because the majority of transcripts purchased by the superior courts are for criminal proceedings. The task force developed recommendations to recalculate the cost of criminal transcripts. In 2005, the council accepted the task force's report, but no action has been taken on the recommendations.

### **Rationale for the Declaration**

Members of the committee representing the media stated that civil and criminal transcripts are sometimes extremely costly. Reporters and news outlets often use transcripts to prepare their stories. When the transcripts are costly, some members of the media cannot afford to purchase them. The committee concluded that the high price of some transcripts essentially hinder the media's access to court proceedings and, thereby, the public's knowledge of various cases and proceedings. The committee determined that media leadership should attempt to open lines of communication directly with court reporter leadership to discuss this concern and determine if any agreement can be reached. Because the committee is not requesting that the council take any action at this time and the committee is not taking any formal action as a whole, this issue is presented in the form of a statement, rather than a recommendation.

### **Alternatives Considered and Policy Implications**

The Access to Court Proceedings Working Group considered recommending development of a new Judicial Council advisory group to address the cost of certified transcripts. The committee was informed of the Reporting of the Record Task Force's attempt to address this issue. Because significant effort had been made by this task force, the working group members determined instead that the media should address their concerns directly with court reporters. If those representatives meet and are able to reach agreement regarding modification of the current system that requires some change in rules of court and/or California statute, they will make an appropriate joint recommendation to the judicial branch and/or the Legislature. Such a joint recommendation should be thoroughly vetted by judicial branch leaders and trial courts because of possible impacts on trial court operations and budgets.

### **Implementation Requirements, Costs, and Operational Impacts**

The independent meetings between representatives of the media and court reporters will not create any implementation requirements, costs, or operational impacts for the judicial branch.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

Goal I: Access, Fairness, and Diversity

Goal IV: Quality of Justice and Service to the Public

### **Future Consideration—Access to Appropriate Juvenile Court Proceedings and Records**

Some committee members expressed a desire to discuss and make recommendations to improve media access to appropriate juvenile court proceedings and records. Members recognized,

however, that the committee lacked the time to adequately address this issue. In addition, such a comprehensive review and discussion would require the participation of additional groups that are not represented on the committee.



# Enhanced Education and Training

## Background

The recommendations set forth in this section relate to the following strategies of the committee's purpose statement:

- Encourage the public and the media to learn about the judicial system, and the judicial branch to learn about the media;
- Provide a forum for ongoing dialogue; and
- Encourage fair and accurate reporting.

The Educational Programming Working Group crafted the early versions of the recommendations discussed in this section and presented them to the committee at the business meetings. The resulting recommendations are therefore the product of discussions within the working group and the committee as a whole. The committee recognized a need for the judicial branch and bar to take the initiative in improving communications with the media. The media is eager to have greater access to the courts, and, therefore, is willing to strengthen relations with the bar and judicial branch. Education and training for judicial branch leaders, bar members, and the media was determined to be the cornerstone of mutually supportive relationships.

The current statewide landscape shows massive media layoffs, reduced budgets for newsgathering, reductions in court staff, and fewer local bench-bar-media committees. Some committee members noted that courtroom staff (e.g., court clerks and bailiffs) lack knowledge regarding pertinent court rules and the handling of media requests. Education and training are therefore even more critical.

In the committee's view, the following are required to develop effective and lasting communication among the courts, media, and bar:

- Leadership at the statewide level to provide forums for dialogue and encourage participation in educational events;
- Active participation and presence of the courts' presiding judges, court executive officers, and public information officers at meetings with the local media; and
- Creation of regional public information officer positions and interdisciplinary teams to assist in resolving free press–fair trial conflicts.

The final report of the Judicial Council's Commission for Impartial Courts includes a recommendation that supports the educational recommendations of this committee. The commission concluded that media-related training was needed to better inform the public of the role and operations of the state court system through accurate reporting of judicial matters. Commission recommendation 41 states that "[j]udges and court administrators should be better

trained on how to interact with the media, and training for the media in reporting on legal matters should be supported and facilitated.”<sup>14</sup>

The committee presents four recommendations to address the above-mentioned issues.

## **Recommendations 4–7**

### **Recommendation 4: Educational Content and Programs**

Support creation of educational content and programs to enhance relationships and cross-communication among the bench, bar, media, court staff, and public. To that end, the committee recommends the following:

- A. The content and programs should be designed for trial and appellate court justices, judges, and staff, as well as for the bar and media;<sup>15</sup>
- B. The Judicial Council should facilitate the creation of regional superior court academies and provide the superior courts with resources for their development;
- C. The content and programs should provide guidance on how to create and maintain local superior court bench-bar-media committees: and
- D. The AOC should create and maintain an online repository of resources that the courts can use to strengthen their educational programs regarding media relations and media access.

### **Recommendation 5: Judicial Officer Training on Clear Presentation of Statements**

Develop training for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily grasped by the media and the public. This training should address (1) when to prepare a statement and (2) how to prepare a statement.

### **Recommendation 6: Explanation of Legal Terminology**

Encourage trial courts to post glossaries or explanations of legal terminology in multiple languages to their Websites for the benefit of the media and broad public.

### **Recommendation 7: Additional Online Training Materials for Court Staff and Judges**

Post media-related training materials for the courts on a secure internal online site, such as Serranus.

### **Previous Council Action**

None.

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<sup>14</sup> Judicial Council of Cal., Commission for Impartial Courts, *Final Report: Recommendations for Safeguarding Judicial Quality, Impartiality, and Accountability in California* (December 2009), <http://www.courtinfo.ca.gov/jc/tflists/commimpart.htm>.

<sup>15</sup> See Appendix 1, Recommended Educational Content, Recommendation 4 of the Bench-Bar-Media Committee.

## **Rationale for Recommendations**

### **Recommendation 4: Educational Content and Programs**

The committee believes that the development of regional bench-bar-media academies organized around media markets and court regions is a key element in the establishment of respectful relationships. Academies would be a two-way street by which the courts would provide information to the media within media markets, and the media would be given the opportunity to provide judges and court staff with training that would give them insight into the media's concerns and needs. Faculty should be comprised of judges, court staff, attorneys, and journalists within the region. Educational programs should include local committees and provide on-line support materials. The content and programs should be designed for justices, judges, and court staff, as well as for the bar and the media.

After considerable discussion, the committee developed optimum educational content for four categories of professionals: (1) justices, judges, other judicial officers, and court administrative staff; (2) counter and courtroom staff and security personnel; (3) the bar; and (4) the media.<sup>16</sup>

Local regional academies would require the courts to commit to educating their staff. Curriculum could be developed and facilitated by the AOC Education Division/CJER and the AOC Office of Communications in conjunction with judicial officers, bar members, and journalists. Specifics on how these academies should be formed and the training they will provide are matters to be explored by an implementation working group.

The committee discussed a number of resources and opportunities and shared personal experiences. One judicial officer member detailed his experience in forming and leading a committee that developed the Legal Academy for Journalists, which provided education on the court system. He described how the academy and committee later dwindled away due to poor media participation. Media members commented that if senior media staff members view a workshop or other event as training, they would be more interested in attending and having their staff attend because the event would represent a rare opportunity at a time of reduced resources for reporter education.

In the past, the AOC has facilitated meetings and trainings for court public information officers and other court staff performing this function. The AOC Education Division/Center for Judicial Education and Research (CJER) has offered both standalone and general courses into which content on media relations has been integrated.<sup>17</sup> Currently, the only required training for judicial officers on media matters is 20 minutes during the New Judge Orientation course. Attendance has been very low for elective courses offered during the past 10 years. Judicial committee members shared that most judges do not feel that they will be faced with media-related issues. Nevertheless, the committee believed that media training for judges and administrators should be

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<sup>16</sup> See Appendix 1, Recommended Educational Content, Recommendation 4 of the Bench-Bar-Media Committee.

<sup>17</sup> See Appendix 7, Media-Related Courses Offered by the Education Division/Center for Judicial Education and Research (CJER), 1999–2010.

enhanced and should continue to be offered in programs such as the New Judge Orientation course and the Judicial College.

The *Judicial Conduct Handbook*, published by the California Judges Association, has a section that deals with the media.<sup>18</sup> The Judicial Council has published the *Media Handbook for California Court Professionals*, which provides guidelines for communicating with the public through the media.<sup>19</sup> The National Judicial College, in collaboration with the National Center for State Courts and media representatives, conducts classes aimed at journalists, judges, and court administrators. The classes are jointly referred to as Law School for Reporters. Through its educational work, the Reynolds National Center for the Courts and the Media ensures that judges and journalists develop insight into their respective roles. The Commission for Impartial Courts developed a tip sheet for judges to use when responding to the media, titled “Responding to Press Inquiries: A Tip Sheet for Judges.”<sup>20</sup>

Some courts have conducted their own local programs. The Sacramento County Media Boot Camp is a two-and-one-half-hour program. A similar model is offered in Fresno County and elsewhere. Also mentioned as excellent examples of media programs were those offered in the Court of Appeal, Fourth Appellate District, Division One; the Superior Court of San Diego County; and the Superior Court of Santa Clara County. The Bench-Bar-Media Committee of San Joaquin County developed a Media Legal Academy curriculum. Due to staff shortages in the court, only half of the sessions were conducted.

One media member suggested reviewing the NewsTrain Project of the Associated Press Managing Editors (APME) as an educational model. APME is an association of U.S. and Canadian editors whose newspapers are members of the Associated Press.<sup>21</sup>

During the implementation phase of these recommendations, the AOC can serve as a clearinghouse for available education and training programs.

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<sup>18</sup> David Rothman, *Judicial Conduct Handbook* (California Judges Association, 2007).

<sup>19</sup> Judicial Council of Cal., *Media Handbook for California Court Professionals* (2007), [http://serranus.courtinfo.ca.gov/reference/documents/media\\_hdbk\\_07.pdf](http://serranus.courtinfo.ca.gov/reference/documents/media_hdbk_07.pdf).

<sup>20</sup> See Appendix 8, Judicial Council of Cal., Commission for Impartial Courts, *Final Report: Recommendations for Safeguarding Judicial Quality, Impartiality, and Accountability in California* (December 2009), Appendix J:

“Responding to Press Inquiries: A Tip Sheet for Judges,” <http://www.courtinfo.ca.gov/jc/tflists/commimpart.htm>.

<sup>21</sup> NewsTrain offers practical advice and techniques to help frontline editors polish their editing and leadership skills and to become more effective editors for print and online news coverage. Nationally recognized trainers teach skills that editors can immediately use on the job. The program features workshops in management/leadership, editing/coaching, online news, and credibility/ethics. See [www.apme.com](http://www.apme.com).

### **Recommendation 5: Judicial Officer Training on Clear Presentation of Statements**

Judicial officers need to be able to better summarize and explain the court's decision (at the beginning of an opinion) in language that is easily understood by the media and the general public. A well-explained court decision is an opportunity to educate the public about the decision making process of a judge and to leave little room for misinterpretation. The judicial officer can explain that the laws applied are those enacted by the Legislature and are not arbitrarily decided. Since writing a good news lead is an acquired skill, the committee believes that guidelines should be developed detailing when it is particularly important to draft a brief summary and how to draft a summary.

The U.S. Supreme Court and the California Supreme Court routinely prepare summary statements along with some appellate and superior court judicial officers.

The Commission for Impartial Court's final report includes a recommendation that echoes the recommendation of this committee. The commission concluded that judicial officers play a critical role in informing the public of the role and operations of the state court system through accurate reporting of judicial matters. Commission recommendation 39 states "[t]raining should be developed for judges and justices on how to present clearly the meaning or substance of court decisions in a way that can be easily understood by litigants, their attorneys, and the public."<sup>22</sup> In the commission's view, many judicial opinions are not written in a manner that is easily understood by nonattorneys. Introductory remarks or paragraphs could summarize a case and the court's decision in a way that can enhance media accuracy. The commission recognized that this has been a controversial issue. Judges disagree on whether they should tailor how they write their opinions for the media and public.

Current AOC Education Division/CJER judicial training on this subject needs to be reviewed and enhanced. Training should be included on a consistent basis through the division's participation in programs such as the New Judge Orientation programs at the Judicial College.<sup>23</sup>

### **Recommendation 6: Explanation of Legal Terminology**

Online glossaries explaining legal terminology are located on the California Courts website Press Center<sup>24</sup> and the Self-Help Center.<sup>25</sup> Some courts, such as the Superior Court of Los Angeles County<sup>26</sup> and the Superior Court of Sacramento County,<sup>27</sup> have created online glossaries. The committee recommends that available resources be reviewed and consolidated by the AOC for easy access by website users, including the media.

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<sup>22</sup> Judicial Council of Cal., Commission for Impartial Courts, *Final Report: Recommendations for Safeguarding Judicial Quality, Impartiality, and Accountability in California* (December 2009), [www.courtinfo.ca.gov/jc/tflists/commimpart.htm](http://www.courtinfo.ca.gov/jc/tflists/commimpart.htm).

<sup>23</sup> Byran A. Garner, *Legal Writing in Plain English: A Text With Exercises* (2001) was mentioned by members as an outstanding guide for lawyers.

<sup>24</sup> See [www.courtinfo.ca.gov/presscenter](http://www.courtinfo.ca.gov/presscenter).

<sup>25</sup> See [www.courtinfo.ca.gov/selfhelp/glossary.htm](http://www.courtinfo.ca.gov/selfhelp/glossary.htm).

<sup>26</sup> See [www.lasuperiorcourt.org/courtnews/Uploads/14200972484357MediaGlossary-pdf\\_Layou1.pdf](http://www.lasuperiorcourt.org/courtnews/Uploads/14200972484357MediaGlossary-pdf_Layou1.pdf).

<sup>27</sup> See [www.saccourt.ca.gov/general/legal-glossaries/legal-glossaries.aspx](http://www.saccourt.ca.gov/general/legal-glossaries/legal-glossaries.aspx).

**Recommendation 7: Online Training Materials for Court Staff and Judges**

There is a need to provide judicial officers and court staff with greater training support through online resources. This information could serve as a toolbox for many courts that lack available funds to develop and conduct training. Some courts (e.g., the Superior Court of San Diego County and the Superior Court of San Joaquin County) provide support materials for the media on their websites. Serranus, a password-protected website for judges and court staff, was suggested as an ideal location for posting educational materials for court personnel.

**Alternatives Considered and Policy Implications**

Education and training could be offered on a statewide level but would require considerable funds and would not include all stakeholders.

**Implementation Requirements, Costs, and Operational Impacts**

Staff of the AOC Education Division/CJER has expressed to the committee an interest in working with an implementation body to modify existing courses or to launch new ones. Court administration would need to commit to the time for training judicial officers and staff.

The creation of regional education programs would require initial, moderate staff resources for program development and enhancement by staff of the Education Division/CJER. Staff in the AOC Executive Office Programs Division is also available to support these endeavors.

**Relevant Strategic Plan Goals and Operational Plan Objectives**

Goal V: Education for Branchwide Professional Excellence

# Conflict Resolution Among the Bench, Bar, and Media

## Background

The recommendations set forth in this section relate to the following strategies of the committee's purpose statement:

- Eliminate unnecessary conflicts between the stakeholders without legal action, where possible, and improve the process of identifying and resolving those conflicts that require legal resolution; and
- Discuss the creation of local or regional committees to communicate with the media and/or the courts on urgent or sensitive matters affecting all three stakeholders.

The Conflict Resolution Working Group initiated early drafts of the following recommendations, which were later refined with the full committee's feedback. The committee recognizes that a smooth, organized response to media requests for access to information or court proceedings increases transparency and enhances the public's confidence in the courts. On the other hand, a disorganized, uncoordinated response to the media can result in days, weeks, and even months of unflattering media attention and can negatively impact the public's confidence in the judicial branch.

Currently, a judge faced with a high-profile case or a complex media situation can enlist the assistance of the court's presiding judge and public information officer (if the court has a PIO), discuss the issue with court administration, contact another judge with experience in this area for advice, and request assistance from the AOC Office of Communications or appropriate AOC regional office. Many of the larger courts have a PIO who sometimes advises other small to medium-size courts. The committee believes that greater support should be provided, particularly to smaller courts facing a high-profile trial or another complex media situation.

To enhance judicial branch communication and to better provide assistance to the courts, the AOC established three regional offices—the Bay Area/Northern Coastal Region (representing 16 counties), the Northern/Central Region (representing 31 counties), and the Southern Region (representing 11 counties). AOC staff has been assigned to each region, and the superior courts within the region meet regularly to discuss timely issues. To further enhance relationships among the courts, bar, and media and to reduce unnecessary conflicts among these stakeholders, the committee recommends (1) the implementation of a regional media access plan and (2), when resources permit, the creation of three public information officer positions to be based in each of the AOC regional offices.

## Recommendations 8–9

### **Recommendation 8: Regional Media Access Plan (Rapid Response Plan for Access to the Judicial Process)**

- A. Implement a Regional Media Access Plan to address conflicts among the bench, bar, and media regarding access to the judicial process.<sup>28</sup>
- B. Direct the Bench-Bar-Media Implementation Working Group to seek the opinion of the Supreme Court’s Committee on Judicial Ethics Opinions (CJEO) to determine whether there are any ethical constraints on judges participating in the Regional Media Access Plan. Specifically, the working group should seek clarification as to whether it is proper for a judge who has communicated with an attorney or media member with an interest in a particular case to offer advice or assistance to the judge sitting on that case.

### **Previous Council Action**

None.

### **Rationale for Recommendation**

#### **Regional Media Access Plan**

The committee discussed various court-media scenarios where a PIO or media access team could have mitigated unfortunate situations. In one such incident, court security personnel denied the media entrance to a proceeding for a case that had garnered much attention locally. Committee members acknowledged that most courts could benefit from a readily accessible resource for input on complex media matters.

The Washington judicial branch has implemented a highly effective Liaison Committee of the Bench-Bar-Press Committee of Washington, commonly known as the “Fire Brigade.”<sup>29</sup> Judge William Downing (King County Superior Court, Seattle, Washington) has served as chair of the Fire Brigade for more than 10 years and met with the Conflict Resolution Working Group by conference call to convey his experiences. The Fire Brigade is called into action whenever anyone feels it has the potential to be helpful in resolving an incipient free press–fair trial dispute that has arisen or may arise in the course of a legal action. A judicial member of the team makes the initial contact with the judge presiding over the high-profile case or case involving the media access issue. The Fire Brigade then works with the media, other judges, and attorneys to sort out conflicts regarding courtroom coverage.

The proposed regional media access plan for the California judicial branch was modeled after the Washington Fire Brigade. The goal of the plan is to assist courts with resolving disagreements

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<sup>28</sup> See Appendix 2, Regional Media Access Plan, Recommendation 8 of the Bench-Bar-Media Committee.

<sup>29</sup> For additional information concerning the Bench-Bar-Press Committee of Washington and its Liaison Committee see [www.courts.wa.gov/committee/?fa=committee.home&committee\\_id=77](http://www.courts.wa.gov/committee/?fa=committee.home&committee_id=77).



with the media quickly and amicably and to promote better working relationships among the bench, bar, and media.

It should be emphasized that the plan's proposed regional media access teams are not decision makers. Rather, their purpose is to act as a resource to courts that wish to have their assistance. The presiding judge of the involved court is the decision maker regarding the resolution of free press-free trial disputes.

The regional media access plan envisions the assembly of three media access teams that correspond to the three superior court regions supported by the AOC regional offices—the Bay Area/Northern Coastal Region, the Northern/Central Region, and the Southern Region. The committee emphasized that the access teams should be localized and, if possible, proactive. It is likely that the teams will encounter fluid situations, so team members will need to be able to respond rapidly.

The committee recommends that a superior court judge serve as the primary liaison to the courts, attorneys, and media in the more difficult situations or high-profile matters. The committee also noted that it is critical to have a judge who is sensitive to and knowledgeable of ex parte issues be responsible for conversations with the sitting judge. A judge presiding over a case is more likely to trust the guidance of a local judge possessing this unique experience.

The committee advises that the sitting judge consult with his or her presiding judge before consulting with an external judge to avoid inappropriate ex parte communications.

The committee noted that it is critically important for a court's presiding judge, the sitting judge, the court's PIO, and the press to discuss logistical issues so that the case proceeds smoothly. It would be ideal to involve all stakeholders. It is imperative to keep this process simple so as to address media concerns quickly. One member suggested that, ideally, the sitting judge would hold such conversations with participants in open court.

### ***Components of the Regional Media Access Plan***

The components of the proposed regional media access plan are:

*Purpose.* The regional media access plan would be called into action whenever a court, attorney, or media representative believes the plan could assist in recommending ways to resolve conflicts that emerge before or during media coverage of a court proceeding.

*Examples of conflicts.* The plan could be helpful in resolving conflicts such as restrictions on media coverage of a particular proceeding, obscure local procedures regarding access to court documents or administrative information, or lack of explanation by a judge of the reasons for rulings affecting the media.

*Teams and structure.* After careful consideration, a model corresponding to the AOC's three region structure was considered the most viable and effective. Numerous other structures were considered, such as a centralized statewide plan, a plan using California's 12 media markets as the boundaries, a plan using the six appellate court districts as boundaries, and media markets combined into seven regions.

Members considered whether the teams would be capable of developing and maintaining expertise if the membership is continuously changing. One media member was concerned that the regional team structure would not help the court craft an access plan that would accommodate the needs of a national or global audience.

*Composition of response teams.* Members carefully considered the composition of the response teams and suggested that within each region the following be included in the team: judge, court executive officer or designee (e.g., PIO), members of the media, member of the State Bar, local PIO or other court staff with equivalent experience, AOC regional administrative director, and staff from the AOC Office of Communications.

The plan also includes guidance about the selection and qualifications of members. Experience with high-profile cases and media access issues is recommended. The judicial member of the team would serve as lead.

*Program oversight.* General program direction would be provided by both the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. Staff from the AOC Office of Communications would continue to be available for support and advice.

*Call to action.* Three types of conflict resolution could trigger action by a regional media access team: proactive, easily solvable, and complex.

### **Seeking Opinion Regarding Ethical Constraints**

The committee had concerns regarding the ethics of ex parte conversations involving the judge presiding over the case. Specifically, is it proper for a judge who has communicated with the bar and the media on a particular case to offer assistance or advice to a trial judge sitting on that case? The committee discussed the following as they apply to judicial officers seeking advice from other judicial officers: California Code of Judicial Ethics, canon 3(B)(7)(b); the American Bar Association Model Code of Judicial Conduct, rule 2.9(A); and the California Judges Association's *Judicial Conduct Handbook*.

The committee recommends seeking a legal opinion from the California Supreme Court's Committee on Judicial Ethics Opinions on the propriety of the proposed conflict resolution plan. In essence, the committee asks that the Supreme Court committee explore any ethical issues that may arise when a judicial officer speaks with another judicial officer about disputes involving media access.

### **Alternatives Considered and Policy Considerations**

As previously discussed, the committee considered a single statewide structure and other models for the establishment of regional media access teams. The committee concluded that a statewide structure would lack the needed in-depth familiarity with the court and its local media representatives. Additionally, if regional public information officer positions are not created and a regional media access plan is not pursued, a lack of consistency in responding to requests for media access will continue to exist.

### **Implementation Requirements, Costs, and Operational Impacts**

The creation of three regional media access teams would require time and consideration by the council's Trial Court Presiding Judges Advisory Committee, Court Executives Advisory Committee, and the AOC regional administrative directors to discuss the concept and to nominate initial team members. A moderate amount of time would be required by staff of the AOC Office of Communications to support these efforts.

### **Relevant Strategic Plan Goals and Operational Objectives**

Goal I: Access, Fairness, and Diversity

Goal IV: Quality of Justice and Service to the Public

### **Recommendation 9: Creation of Regional Public Information Officer (PIO) Positions**

Direct the Administrative Director of the Courts to create and fund three public information officer (PIO) positions, with one position assigned to each of the AOC's three regional offices, when funds are available. The primary responsibilities of the three recommended regional PIOs would include assisting local courts with the following: 1) coordination of media activities in high-profile cases; 2) response to other complex media situations; and 3) community outreach efforts and general media relations.

### **Previous Council Action**

None.

### **Rationale for Recommendation**

The committee believes that superior courts can significantly benefit from personnel experienced in media relations and who are familiar with the individual courts (i.e., the court's facility, the court's personnel, the county the court serves, the governmental and police agencies in that county, and the media agencies in the relevant media market). Only 6 of our larger superior courts have professional PIOs on staff, while another 10 superior courts have staff who perform PIO duties as needed in addition to their other primary administrative responsibilities. At this time, the AOC's regional offices have no staff dedicated to aiding the courts with media matters.

The primary responsibilities of the three recommended regional PIOs would include assisting local courts with (1) coordination of media activities in high-profile cases, (2) response to other complex media situations, and (3) community outreach efforts and general media relations. The committee agreed that a desired qualification would be bilingualism or multilingualism. The AOC Office of Communications and Public Information Office can offer support to these positions and continue providing advice to the courts.

### **Alternatives Considered and Policy Considerations**

The committee discussed continuing the practice of courts informally lending assistance to each other through the relatively few court PIO positions that exist statewide or continuing to contact other judges, court administrators, or the AOC for advice. These are not optimum measures because of the extensive responsibilities already assigned to the current PIOs and the lack of in-depth familiarity they often have with the court requesting assistance. Regional public information officers working in conjunction with the AOC regional administrative directors, the AOC Office of Communications, and the regional media access teams would create consistency in responding to access issues.

### **Implementation Requirements, Costs, and Operational Impacts**

The committee agreed that while the state's current fiscal crisis will prevent funding for three new AOC positions in the near future, it was still critical for the committee to state this recommendation with the condition that it should be considered when the creation of such positions is more feasible. The committee recommends that the AOC entirely fund any new positions and employ the new PIOs; it does not recommend that the superior courts assume any of the costs associated with the creation and maintenance of these positions. The costs and operational impacts of creating and maintaining three regional PIO positions are unknown at this point. If the Administrative Director of the Courts directs that these positions be created, AOC staff will then determine the appropriate staff classifications, related costs, and resultant operational impacts.

### **Relevant Strategic Plan Goals and Operational Objectives**

Goal I: Access, Fairness, and Diversity

### **Assignments From the Committee**

At the committee's request, staff carried out the following assignments:

***List of judges with high-profile case experience.*** At the committee's request, staff developed a list of judges who have experience handling high-profile cases and who volunteer to assist other judges with media access questions. The list is currently maintained by the AOC Office of Communications. In the future, this list will be posted to an internal judicial branch website that can be accessed only by California judicial officers.

***Resource for judges and court staff handling high-profile cases.*** At the committee's request, AOC staff initiated discussions with court PIOs and other court representatives to develop a checklist of issues or a set of guidelines for judges and court staff handling high-profile trials. This preliminary resource can be finalized by the proposed implementation working group and then be made available to the courts.

#### **Future Consideration—Credentialing**

The subject of how courts can properly identify legitimate reporters and provide appropriate access to court proceedings remains an unresolved issue. The committee discussed this subject several times, but it was not able to come to any recommendations because of the difficulty of determining who is a journalist in today's rapidly changing media forums. Specifically, representatives from emerging social media forums such as blogs and Twitter raise the question of who is a legitimate journalist for the purposes of media access to court proceedings. Several superior courts have reported difficulties with this issue during high-profile trials, especially when seating for the media is limited. As the demand for access to court proceedings increases, this subject will ultimately necessitate the development of recommended practices or guidelines for the superior courts.

# Implementation

## **Background**

The committee discussed the importance of the key stakeholders—the bench, bar, and media—having the opportunity to shape the future initiatives that will stem from the recommendations. Members suggested that representatives from other internal and external groups also be included in the implementation phase. These other groups could include the California Judges Association, the Judicial Council’s Trial Court Presiding Judges Advisory Committee, the council’s Court Executives Advisory Committee, other council advisory committees, and divisions of the AOC. The appropriate council internal committees, such as the Rules and Projects Committee, will also be consulted. So that the recommendations are implemented in a manner that comprehensively addresses the major stakeholders’ concerns, the committee recommends that an advisory working group be formed and an implementation plan be developed for the council’s future consideration.

## **Recommendations 10–11**

### **Recommendation 10: Implementation Working Group**

Following the Judicial Council’s receipt of the final report, direct the Administrative Director of the Courts to appoint a Bench-Bar-Media Implementation Working Group to assist AOC staff with developing a plan to implement the committee recommendations and to assist AOC staff with implementation.

### **Recommendation 11: Implementation Plan**

Following the Judicial Council’s receipt of the final report, direct the Administrative Director of the Courts to provide for consideration at a designated 2011 Judicial Council business meeting an implementation plan. This plan would address:

- The cost of implementing each recommendation in terms of estimated expenses and court and AOC staff resources.
- Whether any of the recommendations will necessitate referral to internal and/or external entities (e.g., other council advisory committees, other AOC divisions).
- Whether implementation of any of the recommendations will require any legislative action.
- A timeline for implementation of each recommendation.
- Prioritization of the recommendations for implementation.

## Appendixes

### **Appendix 1: Recommended Educational Content, Proposed by the Bench-Bar-Media Committee, Recommendation 4.**

- I. Educational content and programs should include the following subjects for *justices, judges, other judicial officers, and court administrative staff*:
  - A. Judicial ethics in relation to communications with the media (e.g., judicial misconduct).
  - B. Working with the media on high-profile cases.
  - C. Cameras and other technology in court buildings, including the courtroom.
  - D. Imposition of and scope of gag orders.
  - E. Access to court records, courtroom, and sealed records.
  - F. Developing and maintaining effective, long-term relationships with the local media.
  - G. Nuts and bolts of reporting (e.g., how the media works, plain English, and deadlines).
  - H. Disclosure of information on jurors (e.g., voir dire, testimony, and questionnaires).
  - I. Court administration issues (e.g., inquiries regarding sensitive issues, such as labor relations).
- II. Educational content and programs should include the following subjects for *counter and courtroom staff, and security personnel*:
  - A. Judicial ethics in relation to communications with the media (e.g., judicial misconduct).
  - B. Working with the media on high-profile cases.
  - C. Cameras and other technology in court buildings, including the courtroom.
  - D. Media and the general public's access to court records, courtroom, and sealed records.
- III. Educational content and programs should include the following subjects for the *bar*:
  - A. Ethical restrictions – when you can and cannot talk about a case.
  - B. Sealing of records (e.g., protective orders).
  - C. The same subjects as outlined above for judges, but developed for attorneys.
- IV. Educational content and programs should include the following subjects for the *media*:
  - A. Access to court records, the courts (including courtrooms), and sealed records.
  - B. Search warrants.
  - C. Cameras and other technology in court buildings, including the courtroom.
  - D. Gag orders.
  - E. Access to jurors and juror information, anonymous juries, and guidelines for contact and interviews.
  - F. High level overview of divisions of the court and judicial branch.

- G. Explanation of court procedures that are commonly covered by the media (e.g., arraignments, sentencing hearings).
- H. Judicial ethical considerations, related rules, and why the rules must be followed.
- I. Contact information at the court and other important practical information:
  - 1. Names and phone numbers to quickly obtain information (e.g., the court's public information officer or its designated spokesperson).
  - 2. How to navigate the court's Web site
- J. Pet peeves of both the media and the courts
- K. Do's and don'ts while in the court: A checklist.
- L. Additional resources and links to information



## **Appendix 2: Regional Media Access Plan, Proposed by the Bench-Bar-Media Committee, Recommendation 8.**

### **Purpose**

The Regional Media Access Plan would be called into action whenever a court, attorney, or media representative believes the plan could assist in recommending ways to resolve conflicts that emerge during media coverage of a court proceeding. The goal of the plan is to create an effective mechanism to assist the court in resolving disagreements quickly and amicably and to promote better working relationships between the bench, bar, and media. The proposed access teams are not deciding bodies; their purpose is to act as a resource to courts that request assistance. A trial judge should consult with his/her presiding judge prior to consulting an external judge to avoid inappropriate ex parte communications.

### **Types of Conflict (Examples)**

- Restrictions on media coverage of a particular proceeding
- Obscure local procedures regarding access to court documents or administrative information
- A judge neglects to publicly articulate the reasons for rulings affecting the media

### **Regional Media Access Teams and Structure**

Due to the size of the state, three Media Access Teams would be assembled according to the three actively operational trial court regions supported by the regional offices of the Administrative Office of the Courts as follows:

#### **Bay Area/Northern Coastal Region (16 counties)**

<b><u>County</u></b>	<b><u>Media Market</u></b>
Alameda	San Francisco
Contra Costa	San Francisco
Del Norte	Eureka
Humboldt	Eureka
Lake	San Francisco
Marin	San Francisco
Mendocino	San Francisco
Monterey	Monterey
Napa	San Francisco
San Benito	Monterey
San Francisco	San Francisco
Santa Mateo	San Francisco
Santa Clara	San Francisco
Santa Cruz	San Francisco
Solano	San Francisco

Sonoma

San Francisco

**Northern/Central Region (31 counties)**

<b><u>County</u></b>	<b><u>Media Market</u></b>
Alpine	Reno
Amador	Sacramento
Butte	Chico
Calaveras	Sacramento
Colusa	Sacramento
El Dorado	Sacramento
Fresno	Fresno
Glenn	Chico
Kings	Fresno
Lassen	Chico
Madera	Fresno
Mariposa	Fresno
Merced	Fresno
Modoc	Medford
Mono	Reno
Nevada	Sacramento
Placer	Sacramento
Plumas	Sacramento
Sacramento	Sacramento
San Joaquin	Sacramento
Shasta	Chico
Sierra	Sacramento
Siskiyou	Medford
Stanislaus	Sacramento
Sutter	Sacramento
Tehama	Chico
Trinity	Chico
Tulare	Fresno
Tuolumne	Sacramento
Yolo	Sacramento
Yuba	Sacramento

**Southern Region (11 counties)**

<b><u>County</u></b>	<b><u>Media Market</u></b>
Imperial	El Centro & Yuma
Inyo	Los Angeles
Kern	Bakersfield

Los Angeles	Los Angeles
Orange	Los Angeles
Riverside	Los Angeles & Palm Springs
San Bernardino	Los Angeles
San Diego	San Diego
San Luis Obispo	Santa Barbara
Santa Barbara	Santa Barbara
Ventura	Los Angeles

### **Composition of Regional Media Access Teams**

Each Media Access Team should be made up of members of the judicial branch, bar, media, and AOC staff with experience in high-profile cases and media access issues. The judicial member of the team would serve as lead. Suggested team members for each of the regions include:

- Judge from a trial court within the district with experience in high-profile trials and media access issues – The presiding judges within each of the Media Access Team’s regions would nominate the judge who will serve as lead for their region’s team.
- Court executive officer or designee – The court executive officers within each of the Media Access Team’s regions would have responsibility for nominating the court executive officer (or designee) who would serve on their regional team.
- Member of the media (one or more) – The presiding judges and court executive officers within the Media Access Team’s regions would identify the national and local media entities and ask these entities to select their representative(s). If the media entities do not select their representative(s), the presiding judges and court executives will extend invitations to members of the media with whom they have experience or familiarity.
- Member of the State Bar practicing in the region (one) – The presiding judges and court executive officers within the Media Access Team’s regions would identify the local bar groups and ask these entities to select one representative. If the bar groups do not select a representative, the presiding judges and court executives will extend invitations to attorneys with whom they have experience or familiarity. The selected attorney must be knowledgeable of First Amendment and media access issues.
- Local court public information officer or other court staff with equivalent experience (if any).
- AOC Regional Administrative Director or his/her designee.
- Staff from the AOC’s Office of Communications.

### **Program Oversight**

General program direction would be provided by both the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee.

### **Call to Action**

Three types of conflict resolution exist:

1. *Proactive* – When made aware of a possible access issue in a court without a public information officer, staff from the AOC’s Office of Communications would contact

the court's presiding judge or executive officer and offer to share experience gained from assisting other courts with similar situations.

2. *Easily Solvable* – For easily solvable situations, the trial judge could continue to enlist the assistance of the court's public information officer, discuss the issue with court administration, consult another judge for advice based on his or her experience, and/or contact the AOC's Office of Communications.
3. *Complex* – Members of the news media with concerns about access on a complex or urgent matter could contact the Media Access Team (or most likely the media member of the team) for guidance. Any court officer or member of the bar could also contact the team to discuss access issues. Additionally, the team's judicial member could contact the judge who is directly involved with the access issue or presiding over the high-profile case. (Note: Whether a judicial member from the Media Access Team may contact another judicial officer about a particular case depends on the approval of an ethics opinion from the Supreme Court's Committee on Judicial Ethics Opinions.) A conference call with team members and court personnel would be scheduled to discuss the issues in an expedited manner and within the bounds of judicial ethics.

### **High-Profile Cases**

A judge, court executive officer, or public information officer preparing for a potentially sensitive, controversial and/or highly visible case can contact the AOC's Office of Communications to gain insight on what to expect and how to handle significant press attention.

### **References – California Rules of Court, Code of Civil Procedure, Penal Code and Forms**

References on the following subjects and others should be made readily available online for the bench, press, and bar:

- Access to Court Records
- Cameras in the Court
- Gag Orders
- Juror Issues
- Sealed Records
- Media Coverage and Pooling
- Order Permitting Delegation of Media Coverage

### **Appendix 3: Roster of the Bench-Bar-Media Committee by Working Groups**

#### **Access to Court Proceedings Working Group**

##### ***Lead:***

##### **Mr. Ralph Alldredge**

Vice-President

Newspaper Publishers Association

Publisher, Calaveras Enterprise

##### ***Members:***

##### **Ms. Cristina C. Arguedas**

Partner

Arguedas, Cassman, & Headley, LLP

##### **Mr. Ed Chapuis**

News Director

KTVU-TV

##### **Hon. Peter Paul Espinoza**

Assistant Supervising Judge

Superior Court of California,

County of Los Angeles

##### **Mr. David Lauter**

California Editor

Los Angeles Times

##### **Hon. Judith D. McConnell**

Administrative Presiding Justice of the

Court of Appeal, Fourth Appellate District

##### **Mr. Greg Moran**

Legal Affairs Writer

The San Diego Union-Tribune

##### **Mr. Royal F. Oakes**

Legal Commentator

Partner, Barger and Wolen LLP

##### **Hon. Steven Z. Perren (*Liaison*)**

Chair, Criminal Law Advisory Committee

Associate Justice, Court of Appeal

Second Appellate District, Division Six

##### **Ms. Kelli L. Sager**

Partner

Davis Wright Tremaine LLP

##### **Mr. Peter Scheer**

Director

California First Amendment Coalition

##### **Mr. Jonathan Shapiro**

Writer/Producer

#### **Educational Programming Working Group**

##### ***Lead:***

##### **Hon. William J. Murray, Jr.**

Judge

Superior Court of California,

County of San Joaquin

##### ***Members:***

##### **Mr. John Fitton**

Executive Officer

Superior Court of California,

County of San Mateo

##### **Dr. Félix Gutiérrez**

Professor of Journalism and Communication

Annenberg School for Communication

University of Southern California

**Mr. Rex S. Heinke**

Partner

Akin, Gump, Strauss, Hauer & Feld, LLP

**Hon. Jamie A. Jacobs-May**

Presiding Judge

Superior Court of California,

County of Santa Clara

**Ms. Kelli L. Sager**

Partner

Davis Wright Tremaine LLP

**Conflict Resolution Working Group**

***Lead:***

**Hon. Judith D. McConnell**

Administrative Presiding Justice

Court of Appeal, Fourth Appellate District

***Members:***

**Mr. Anthony P. Capozzi**

Attorney

Law Office of Anthony Capozzi

**Mr. Steve Cooley**

District Attorney

District Attorney's Office,

County of Los Angeles

**Ms. Karen Dalton**

Public Affairs Officer

Superior Court of California,

County of San Diego

**Mr. John Raess**

Bureau Chief

Associated Press

**Mr. Peter Scheer**

Director

California First Amendment Coalition

**Mr. Jonathan Shapiro**

Writer/Producer

**Mr. Stan Statham**

President and CEO

California Broadcasters Association

MEDIA AGENCY (name): CHANNEL/FREQUENCY NO.: PERSON SUBMITTING REQUEST (name): ADDRESS:  TELEPHONE NO.:	FOR COURT USE ONLY
Insert name of court and name of judicial district and branch court, if any:	
TITLE OF CASE:	
NAME OF JUDGE:	
<b>MEDIA REQUEST TO PHOTOGRAPH, RECORD, OR BROADCAST</b>	CASE NUMBER:

1. PORTION OF THE PROCEEDINGS TO BE COVERED (e.g., *particular witnesses at trial, the sentencing hearing, etc.*):
2. DATE OF PROPOSED COVERAGE (specify): (File this form at least five court days before the proposed coverage date. If not feasible, explain good cause for noncompliance):
3. TYPE OF COVERAGE
 

a. <input type="checkbox"/> TV camera and recorder	d. <input type="checkbox"/> Audio
b. <input type="checkbox"/> Still camera	e. <input type="checkbox"/> Other (specify):
c. <input type="checkbox"/> Motion picture camera	
4. ☐ SPECIAL REQUESTS OR ANTICIPATED PROBLEMS (specify):
5. ☐ INCREASED COSTS. This agency acknowledges that it will be responsible for increased court-incurred costs, if any, resulting from this media coverage (estimate): \$  
☐ Amount unknown
6. PROPOSED ORDER. A completed, proposed order on Judicial Council form MC- 510 is attached (required by Cal. Rules of Court, rule 1.150).

### CERTIFICATION

I certify that if the court permits media coverage in this case, all participating personnel in this media agency will be informed of and will abide by the provisions of California Rules of Court, rule 1.150, the provisions of the court order, and any additional restrictions imposed by the court.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

Telephone No.:

(SUPERVISORY POSITION IN MEDIA AGENCY)

### NOTICE OF HEARING (A hearing is optional.)

A HEARING will be held as follows:

Date:	Time:	Dept./Div.:	Room:
Address of the Court:			

Clerk, by \_\_\_\_\_, Deputy

**Appendix 5: Washington Rules of Court, General Rule 16 *Courtroom Photography and Recording by the News Media***

**Washington State Court Rules: General Rules**

**General Rule 16**

**COURTROOM PHOTOGRAPHY AND RECORDING BY THE NEWS MEDIA**

(a) Video and audio recording and still photography by the news media are allowed in the courtroom during and between sessions, provided

(1) that permission shall have first been expressly granted by the judge; and

(2) that media personnel not, by their appearance or conduct, distract participants in the proceedings or otherwise adversely affect the dignity and fairness of the proceedings.

(b) The judge shall exercise reasonable discretion in prescribing conditions and limitations with which media personnel shall comply.

(c) If the judge finds that sufficient reasons exist to warrant limitations on courtroom photography or recording, the judge shall make particularized findings on the records at the time of announcing the limitations. This may be done either orally or in a written order. In determining what, if any, limitations should be imposed, the judge shall be guided by the following principles:

(1) Open access is presumed; limitations on access must be supported by reasons found by the judge to be sufficiently compelling to outweigh that presumption;

(2) Prior to imposing any limitations on courtroom photography or recording, the judge shall, upon request, hear from any party and from any other person or entity deemed appropriate by the judge; and

(3) Any reasons found sufficient to support limitations on courtroom photography or recording shall relate to the specific circumstances of the case before the court rather than reflecting merely generalized views.

[Adopted effective December 27, 1991; amended effective January 4, 2005.]

**Comment**

Before 1991 when GR 16 on “Cameras in the Courtroom” was first adopted, the subject had only been addressed in the Code of Judicial Conduct’s Canon 3(A)(7). The intent of the 1991 change



was to make clear both that cameras were fully accepted in Washington courtrooms and also that broad discretion was vested in the court to decide what, if any, limitations should be imposed. In subsequent experience, both judges and the media have perceived a need for greater guidance as to how that judicial discretion should be exercised in a particular case. This 2003 amendment to GR 16 is intended to fill that practical need.

While not providing much guidance for the court's exercise of discretion, the Canon did contain some "illustrative guidelines" on how media personnel should conduct themselves while covering the courts. Although these guidelines were no longer a part of the rule once GR 16 was adopted, they continued to be published in the accompanying Comment. Some portions of those guidelines have now become outdated and others are superseded by language in the new GR 16. Because there continues to be potential value in some of the remaining guidelines, they will be here set out in redacted form:

## ILLUSTRATIVE BROADCAST GUIDELINES

### 1. Officers of Court.

Broadcast newsmen should advise the bailiff prior to the start of a court session that they desire to electronically record and/or broadcast live from within the courtroom. The bailiff may have prior instructions from the judge as to where the broadcast reporter and/or camera operator may position themselves. In the absence of any directions from the judge or bailiff, the position should be behind the front row of spectator seats by the least used aisleway or other unobtrusive but viable location.

### 2. Pooling.

Unless the judge directs otherwise, no more than one television camera should be taking pictures in the courtroom at any one time. It should be the responsibility of each broadcast news representative present at the opening of each session of court to achieve an understanding with all other broadcast representatives as to how they will pool their photographic coverage. This understanding should be reached outside the courtroom and without imposing on the judge or court personnel.

### 3. Broadcast Equipment.

All running wires used should be securely taped to the floor. All broadcast equipment should be handled as inconspicuously and quietly as reasonably possible. Sufficient film and/or tape capacities should be provided to obviate film and/or tape changes except during court recess. No additional lights should be used without the specific approval of the presiding judge.

### 4. Decorum.

Camera operators should not move tripod-mounted cameras except during court recess. All broadcast equipment should be in place and ready to function no less than 15 minutes before the beginning of each session of court.

An accompanying set of "Illustrative Print Media Guidelines" contained substantially the same provisions from print media personnel. The only additional matters addressed were that still

photographers should use cameras operating quietly and without a flash and they should not “assume body positions inappropriate for spectators.”

General Rule 16 may be found online at:

[www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=GR&ruleid=gagr16](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr16).

## Coverage

<p>MEDIA AGENCY <i>(name)</i>:</p> <p>CHANNEL/FREQUENCY NO.:</p> <p>PERSON SUBMITTING REQUEST <i>(name)</i>:</p> <p>ADDRESS:</p> <p>TELEPHONE NO.:</p>	<p>FOR COURT USE ONLY</p>
<p>Insert name of court and name of judicial district and branch court, if any:</p>	
<p>TITLE OF CASE:</p>	
<p>NAME OF JUDGE:</p>	
<p><b>ORDER ON MEDIA REQUEST TO PERMIT COVERAGE</b></p>	<p>CASE NUMBER:</p>

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CASE NAME:  	CASE NUMBER:  
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### FACTORS CONSIDERED BY THE JUDGE IN MAKING THIS ORDER (Rule 1.150)

- |  |  |
|--|--|
| 1. Importance of maintaining public trust and confidence in the judicial system                            | 11. Effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness |
| 2. Importance of promoting public access to the judicial system  | 12. Effect on excluded witnesses who would have access to the televised testimony of prior witnesses   |
| 3. Parties' support of or opposition to the request  | 13. Scope of the coverage and whether partial coverage might unfairly influence or distract the jury   |
| 4. Nature of the case  | 14. Difficulty of jury selection if a mistrial is declared   |
| 5. Privacy rights of all participants in the proceeding, including witnesses, jurors, and victims          | 15. Security and dignity of the court  |
| 6. Effect on any minor who is a party, prospective witness, victim, or other participant in the proceeding | 16. Undue administrative or financial burden to the court or participants  |
| 7. Effect on the parties' ability to select a fair and unbiased jury                                       | 17. Interference with neighboring courtrooms   |
| 8. Effect on any ongoing law enforcement activity in the case  | 18. Maintaining orderly conduct of the proceeding  |
| 9. Effect on any unresolved identification issues  | 19. Any other factor the judge deems relevant  |
| 10. Effect on any subsequent proceedings in the case   |  |

### PROHIBITED COVERAGE (Rule 1.150)

This order does not permit photographing, recording, or broadcasting of the following in the court:

- |  |   |
|--|---|
| 1. The jury or the spectators                                      | 5. A conference between counsel and the judge at the bench ("sidebars") |
| 2. Jury selection  | 6. A proceeding closed to the public                                    |
| 3. A conference between an attorney and a client, witness, or aide | 7. A proceeding held in chambers  |
| 4. A conference between attorneys                                  |   |

### MEDIA PERSONNEL AND EQUIPMENT (Rule 1.150)

NOTE: These requirements apply unless the judge orders otherwise. Refer to the order for additional requirements.

- |  |  |
|--|--|
| 1. No more than one television camera  | 6. No distracting sounds or lights   |
| 2. No more than one still photographer   | 7. No visible signal light or device that shows when equipment is operating  |
| 3. No more than one microphone operator and no obtrusive microphones or wiring | 8. No disruption of proceedings, nor public expense, to install, operate, or remove modifications to existing sound and lighting systems |
| 4. No operator entry or exit or other distraction when the court is in session | 9. No media agency insignia or marking on equipment or clothing  |
| 5. No moving equipment when the court is in session                            |  |

### SANCTIONS FOR VIOLATING THIS ORDER (Rule 1.150)

Any violation of this order or rule 1.150 is an unlawful interference with the proceedings of the court. The violation may result in an order terminating media coverage, a citation for contempt of court, or an order imposing monetary or other sanctions.

## **Appendix 7: Media-Related Courses Offered by the Education Division/Center for Judicial Education and Research (CJER), 1999-2010**

### **Stand-Alone Courses**

- *Continuing the Dialogue Broadcast: The Neuroscience and Psychology of Decision-making: The Media, the Brain and the Courtroom* – This 2010 broadcast was originally broadcast live with an interactive component and is now available to view online
- *Great Minds Broadcast: Dealing with the Media* – This 2006 broadcast was originally broadcast live with an interactive component and is now available to view online
- *Media and Judges* – A one day course offered at the Spring 2004 Continuing Judicial Studies Program (CJSP)
- *When Judges Speak Up: Ethics, the Public and the Media* – A one day course offered at the Summer 1999 and Winter 2000 CJSP
- *Dealing with the Media in High-Profile Cases* – A 90-minute course offered at a Bench Bar Biannual Conference

### **Courses That Include Some Content on Media Relations**

- *Advanced Capital Case Roundtable* – This 2010 course included a segment on managing media issues and will be offered annually
- *Managing the Capital Case in California* – This 2009 course included a segment on managing media issues
- *Criminal Institute* – The 2006 program included a courtroom security course that included media issues in high-profile cases
- *Continuing Judicial Studies Programs (CJSP)* – The 2006 Summer program included media in high-profile cases at the Selected Criminal Issues course
- *Continuing Judicial Studies Programs (CJSP)* – The 2005 Fall program included media in high-profile cases at the Selected Criminal Issues course
- *Criminal Institute* – The 2004 program included the Ethics and Media course
- *Presiding Judge and Court Executive Management Program* – The 2010 program will include a Media course and previous annual programs weave in media issues.

**Appendix 8: “Responding to Press Inquiries: A Tip Sheet for Judges,”  
Commission for Impartial Courts: Final Report, *Recommendations for  
Safeguarding Judicial Quality, Impartiality, and Accountability* (Appendix J),  
December 2009.**

***Responding to Press Inquiries***

**A Tip Sheet for Judges**

- Canon 3B (9) prohibits a judge from commenting publicly about a pending or impending proceeding in any court. A judge is still permitted to talk to the media, however. This tip sheet contains some general guidelines.
- Consider responding to press calls via speakerphone, with a member of staff or court administration in the room to ensure accuracy. Alert the reporter at the beginning of the call that the other person is present to take notes and provide supplemental answers and information.
- CJA maintains a hotline at 415-263-4600.

1. **Explain your ruling on the record.** To the extent possible, judges involved in high-conflict litigation should try to anticipate and prepare for press inquiries in advance of hearings. The best time for you to explain the reasons for a controversial ruling is on the record in open court and in a detailed written ruling that begins with a summary paragraph that clearly presents the facts of the case, legal issues, and basis for the ruling. When the press inquiry is made, court staff can supply the reporter with a transcript and the ruling that contains the summary paragraph.
2. **Consult a trusted colleague.** If you are the subject of public criticism, consult a trusted colleague for objective guidance. Is the criticism warranted? Is there any action that you should take? Avoid isolating yourself or making a hasty or reactive public statement.
3. **Determine who is the most appropriate person to return the reporter’s call.** Because it is generally considered good practice to return a press call, you should evaluate who should return the call. It might be more effective to have the presiding judge, court executive officer, court staff, or other knowledgeable person return it. In deciding who should return the call, you might consider:
  - a. Are you embroiled? If you’re feeling attacked, emotional, or defensive, you probably won’t make the most effective statement.
  - b. Is there a pending case? If so, have someone else in the court return the press inquiry, give the reporter a copy of canon 3B(9), and provide the reporter with any appropriate case information, such as court minutes, rulings, transcripts, pleadings, online information, and access to court files.
4. **Prepare your statement before returning any press inquiries.** You should be extremely careful about speaking to the press without first thinking through your

remarks. If a reporter catches you off-guard, ask for a return number or an e-mail address so that you can speak at a more convenient time. Find out what the reporter would like to discuss in advance so you can prepare yourself. Consider taking the following steps:

- a. Obtain the court file.
  - b. Review the transcript with your court reporter.
  - c. Write out your statement in advance.
  - d. Keep in mind that e-mail and voicemail are very effective ways to respond to press inquiries and to ensure the accuracy of your message.
  - e. Make your quote a complete statement about the message you want to deliver. Say only what you want to say. Make your message brief, clear, and understandable.
  - f. Practice your message first so that it is professional and reasonable and doesn't sound emotional or reactive.
  - g. Avoid saying "No comment." Instead, circle back to your core message. (e.g., "I appreciate your interest. What I want to emphasize is . . .")
  - h. Stress your overriding concern that justice be administered fairly and that the courts operate effectively to serve the community and that you are committed to accountability.
5. **Call the CJA hotline at 415-263-4600.**